IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Sher Singh Vs. State of Rajasthan
(D.B. Criminal Appeal No.1491/2003)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 14-10-2003 in Sessions Case No.54/2003 passed by Shri Iduddin, RHJS, Additional Sessions Judge (Fast Track) No.1 Bharatpur Camp Deeg.

Date of Judgment: April 25, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Arvind Kumar Gupta] for the appellants.
Mrs. Alka Bhtnagar]
Mr. Rinesh Gupta]
Mr. J.R.Bijarnia]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

This appeal owes its origin in the judgment dated October 14, 2003 of the learned Additional Sessions Judge (Fast Track) No.1 Bharatpur Camp Deeg whereby the appellants, nine in number, were convicted and sentenced as under:-

Appellants Sher Singh and Ajeet Singh:
U/s.302 IPC:

Both to suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer simple imprisonment for one month.

U/s.147 IPC:

Both to suffer rigorous imprisonment for three months and fine of Rs.500/-, in default to further suffer simple imprisonment for

fifteen days.

U/s.148 IPC:

Both to suffer simple imprisonment for two years and fine of Rs.500/-, in default to further suffer simple imprisonment for fifteen days.

Appellant Sujeet:
U/s.302/149 IPC:

To suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer simple imprisonment for one month.

U/s.307 IPC:

To suffer rigorous imprisonment for five years and fine of Rs.1000/-, in default to further suffer simple imprisonment for one month.

U/s.147 IPC:

To suffer rigorous imprisonment for three months and fine of Rs.500/-, in default to further suffer simple imprisonment for fifteen days.

U/s.148 IPC:

To suffer simple imprisonment for two years and fine of Rs.500/-, in default to further suffer simple imprisonment for fifteen days.

Appellants Ishwar Singh, Bhima, Nepal Singh, Thano @ Than Singh, Charan Singh and Harbhan Singh:
U/s.302/149 IPC:

Each to suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer simple imprisonment for one month.

U/s.307/149 IPC:

Each to suffer rigorous imprisonment for five years and fine of Rs.1000/-, in default to further suffer simple imprisonment for one month.

U/s.147 IPC:

Each to suffer rigorous imprisonment for three months and fine of Rs.500/-, in default to further suffer simple imprisonment for fifteen days.

U/s.148 IPC:

Each to suffer simple imprisonment for two years and fine of Rs.500/-, in default to further suffer simple imprisonment for fifteen days.

The substantive sentences were ordered to run concurrently.

2. As per the prosecution story on December 9, 2000 ASI Police Station Deeg reached to the Hospital Deeg and recorded Parcha Bayan (Ex.P-15) of injured Balveer Singh (Pw.4) at 9.15 PM, wherein it was stated that on the said day while he along with Shiv Singh (since deceased) was watering his mustard field and in the nearby field Ranjeet Singh was installing engine on the well. Sujeet (appellant) walked through their field. He then warned Sujeet not to use their field as thoroughfare. At this Sujeet reacted sharply went away. After some time Sher Singh, Ajeet, Ishwar Singh, Harbhan Singh, Kano @ Than Singh, Bhima, Charan Singh, Nepal Singh came to his field. Sujeet, who was armed with Katta (country made gun) opened fire at Ranveer that hit his right hand. Sher Singh inflicted Pharsa blow and Ajeet and Harbhan gave lathi-blows on the head of Shiv Singh. Than Singh, Charan Singh, Harbhan and Bhima inflicted injuries on the person of Balveer, Ishwar Singh gave lathi blow on the hand of Ranveer Singh. On that parcha bayan a case under sections 147, 323, 447, 341 and 307 IPC was registered and investigation commenced. In the course of investigation Shiv Singh died and section 302 IPC came to be added. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Bharatpur Camp Deeg. Charges under sections 148, 302/149, 307/149, 323 and 447 IPC were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 28

witnesses. In the explanation under Sec.313 Cr.P.C., the appellants claimed innocence. Two witnesses in support of their defence were examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. We have heard learned counsel for the appellants and learned Public Prosecutor and with their assistance scanned the material on record.

4. Death of Shiv Singh was undeniably homicidal in nature. Vide Post Mortem Report (Ex.P-32) following injuries were found on dead body:-

1. Abrasion 2 x 1cm at Rt. supra scapular region with soft scab.
2. Abounded bruise 5 x 2cm with reddish blue in colour at post Rt. shoulder on cut effusive & Extensive dark red blood.
3. Abrasion 2½ x ½cm Rt. side front of chest at infra clavicle
4. Abrasion 5 x 1½ cm Lt. side front of chest nine mid line
5. Stitched wound of size 4cm with 3 stitches placed at Rt. leg M/3 part with soft scab forming in further dissection there is fracture of Rt. tibia at m/3 part ante mortem haematoma
6. Stitched wound of size 1.5cm at Rt. tibia tubarocity just below Rt. knee
7. Two abrasions of size each 3 x 1cm & 2 x 1cm just blow Lt. knee cap with soft scab forlin
8. Abrasion ½ x ½ cm at lt.3rd toe dorscaly
9. Abrasion 1 x ½cm just below Lt. mastoid region with soft scab
10. Stitched wound 5cm long irregular obliquely Lt. side frontal region of skull upto mid line of skull with diffuse swelling.
11. Stitched wound U in shape placed Lt. fronto part & temporal region.

In the opinion of Dr. N.L.Disaniya (Pw.23) the cause of death was ante mortem injuries to skull and brain.

Ranveer Singh (Pw.7) vide injury (Ex.P-33) received following injuries:-

1. Punctured lacerated wound with irregular margin of size 4.5 x 2cm with abrasion colour and slight blackening over margin of wound placed in ulna side of Rt. hand ?? deep margins slightly everted wound extending upto distal end of Rt. forearm.
2. Lacerated wound 8cm x 6cm irregular shaped margin slightly everted, placed on dorsum of Rt. hand deep with fresh clotted blood.
3. Abrasion 3cm x 1½ cm red in colour placed on distal 1/3part of Rt. forearm on ulna aspect
4. 2.5 x 2cm lacerated wound muscle deep with fresh clotted blood placed just distal to injury no.3.

Balveer Singh (Pw.4) vide injury (Ex.P-34) received following injuries:-

1. L shaped stitched wound 5cm long placed in Rt. side occipital parietal area with diffuse swelling.
2. Scratch Abrasion 4cm x 1cm with red scab on dorsum of Rt. forearm
3. Two parallel bruises 6cm x 1cm with gap of ½ cm on Rt. arm laterally
4. Diffuse swelling with c/o pain
5. C/o pain with middle dorsal and Rt. side back.

5. In the same incident appellant Sher Singh vide injury report (Ex.D-7) received following injuries:-

1. Lacerated wound 2½ x 1cm x muscle deep over left parietal bone
2. Bruise 3x2cm left Infra orbital region
3. Bruise 2x1cm left scalp upper half
4. Bruise with swelling 5x4cm post surface of left forearm.

6. Star witness of the prosecution viz. Ranveer Singh (Pw.7) and Balveer Singh (Pw.4) although deposed that all the appellants had formed unlawful assembly and killed Shiv Singh, a close scrutiny of their testimony reveals that deceased and the members of complainant party had no previous

enmity. Balveer Singh in his cross examination admitted this fact:-

"हमारी मुल्जिमान से कोई रंजिश नहीं थी।"

7. It also appears that on the report of appellant Sher Singh cross case was registered against the complainant party. Jeevan Singh, IO (Pw.26) in his cross examination deposed as under:-

"यह बात सही हैकि मुकद्दमा नम्बर 640/2000 भी मेरे थाने पर दर्ज हुआ था जो शेर सिंह पुत्र खचेरा ने दर्ज कराया था।"

Jeevan Singh also admitted that the fields of appellants also existed near the field of Balveer Singh but he did not know as to whether there was path way or not. He stated as under:-

"घटनास्थल के पास थोड़ा आगे मुल्जिमानों के भी खेत थे। और उन खेतों को जाने के लिए अलग से रास्ता था या नहीं... मजरूबान के खेतों में होकर रास्ता था या नहीं मेरी जानकारी में नहीं है।"

8. That appellants examined Dr.Suresh Garg (Dw.1) to prove the injury report (Ex.D-7) of appellant Sher Singh. Appellant Sher Singh, who appeared as defence witness (Dw.2), stated that the complainant party was the aggressor and inflicted injuries with lathis on his head and other parts of the body. He lodged the report with the police but the police submitted final report and he had to file complaint on which cognizance was taken by the Magistrate against the complainant party. In order to support his ocular version Sher Singh got exhibited documents Ex.D-9, Ex.D-10, Ex.D-11.

9. Fact situation that emerges from the material on record may be summarized as under:-

(i) There was no enmity between the appellants and the deceased and the occurrence was sudden affair.

(ii) Something which has not been completely unravelled might have sparked off the incident.

(iii) There was a dispute regarding path way. The accused party put forward the claim that although it had the right to use the way, the deceased and Balveer Singh did not allow them to use the way.

(iv) On the date of incident fight ensued and the deceased died in the course of sudden and free fight.

(v) Appellant Sher Singh sustained injury in the fight and on his report cross case was registered against the complainant party.

10. In Kambi Nanji v. State of Gujarat (AIR 1970 SC 219) their Lordships of the Supreme Court indicated that where there was a melee at the time of incident and the two groups indulged in a free fight resulting in injuries to persons of both groups and death of two, if the court comes to the conclusion that the injuries sustained by the persons were in the course of a free fight then there is no question of common object and only those persons who are proved to have caused injuries or death can be held guilty for the offence individually committed by them.

11. In Munir Khan Vs. State of UP (AIR 1971 SC 335) it was indicated that in a mutual fight there is no common object and none of the accused can be convicted by having recourse to section 149 IPC.

12. Having analysed ocular and documentary evidence we notice

that complainant party and accused party had no previous enmity and there was a melee at the time of incident and two groups indulged in a free fight resulting in injuries to persons of both groups and death of Shiv Singh. Members of complainant party were also armed with weapons and in the fight appellant Sher Singh sustained lacerated wound on the head. The prosecution witnesses did not explain this injury. This fact gives rise to the inference that the prosecution is guilty of suppressing the genesis and origin of the occurrence. Since it was a sudden fight and without premeditation there was no common object and only those persons who are proved to have caused injuries or death can be held guilty for the offence individually committed by them.

13. In the ultimate analysis we find that the appellants could not have been convicted under section 147, 148 and 149 IPC. In the facts and circumstances of the case the possibility of over implication of appellants Ishwar Singh, Bhima, Nepal Singh, Thano @ Than Singh and Charan Singh cannot be ruled out and they are entitled to benefit of doubt. Appellants Sujeet and Harbhan Singh are respectively found guilty for committing offences under sections 308 and 323 IPC. Since the injuries sustained by the deceased in the course of sudden and free fight resulted in his death, in the facts and circumstances of the case it could not be said that appellants Sher Singh and Ajeet Singh acted in cruel or unusual manner and the case against these appellants clearly fell within Exception 4 of Section 300 IPC.

14. For these reasons, we dispose of instant matter in the following terms:-

(i) We allow the appeal of appellants Ishwar Singh, Bhima, Nepal

Singh, Thano @ Than Singh and Charan Singh and acquit them of the charges under sections 148, 302/149, 307/149 and 447 IPC. These appellants are on bail, they need not surrender and their bail bonds stand discharged.

(ii) We partly allow the appeal of appellant Sujeet and instead of section 307 we convict him under section 308 IPC. Looking to the fact that the appellant has already undergone confinement for a period of more than one year and nine months the ends of justice would be met in sentencing him to the period already undergone by him in confinement. We however acquit him of the charges under sections 148, 302/149 and 447 IPC. The appellant Sujeet is on bail, he need not surrender and his bail bonds stand discharged.

(iii) We partly allow the appeal of appellant Harbhan Singh and instead of section 307/149 we convict him under section 323 IPC. Looking to the fact that the appellant has already undergone confinement for a period of more than one year and nine months the ends of justice would be met in sentencing him to the period already undergone by him in confinement. We however acquit him of the charges under sections 148, 302/149 and 447 IPC. The appellant Harbhan Singh is on bail, he need not surrender and his bail bonds stand discharged.

(iv) We partly allow the appeal of appellants Sher Singh and Ajeet Singh and instead of section 302 we convict each of them under section 304 part II IPC. Looking to the fact that both these appellant have already undergone confinement for a period of more than six years the

ends of justice would be met in sentencing them to the period already undergone by them in confinement. We however acquit them of the charges under sections 148, 307/149 and 447 IPC. The appellants Sher Singh and Ajeet Singh, who are in jail, shall be set at liberty forthwith, if they are not required to be detained in any other case.

(v) The impugned judgment of learned trial court stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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